

# THE WETLAND BANKING PROCESS

Guidance for the  
New York State Department of Transportation



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March 6, 2002

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Outlined below are the tasks that a DOT Region must undertake to successfully establish a wetland mitigation bank. These tasks generally follow and satisfy regulatory agency guidelines.

### **Task 1. Analyze the Actual Need for a Wetland Mitigation Bank**

Before investing significant resources (both staff and financial) in establishing a Wetland Mitigation Bank, analyze the regional 12 Year Capital Program to determine if the quantity of future wetland impacts are sufficient enough to warrant a Bank. The analysis should include the following:

- Determine the geographic area where the majority of wetland impacts will occur.
- Determine the potential quantity of wetland losses.
- Determine the type(s) of wetland that will be most impacted (i.e. - freshwater emergent marsh, salt water estuary).
- Determine the physical and biological functions that will be most impacted (i.e. - stormwater storage, wildlife habitat).
- Determine if there are private banks currently available for use, or if private banks are being progressed (check with the COE and DEC offices).
- Determine if the physical and biological functions provided by the private banks are suitable for your needs.

### **Task 2. Find a Physically-Appropriate Site for a Bank**

Search for an appropriately-sized site that will provide the physical and biological functions necessary to compensate for your expected losses. Don't hesitate in asking the COE, DEC or other environmental agencies if they know of potential sites.

Potential mitigation bank sites should be non-wetlands which have inherent characteristics that can be altered to produce wetland conditions. Avoid sites that will require extensive, cost prohibitive construction (earthmoving) in order to convert the physical conditions from non-wetland to wetland. The three most common site conditions appropriate for a wetland mitigation bank are:

- Sites that have been converted from wetland to a non-wetland condition but can easily be converted (restored) back to wetland. Wetland that has been artificially drained to create farmland is the most common situation.
- Sites with surface water flows that can be diverted, dammed, or manipulated to create conditions wet enough to support wetland vegetation/habitat.
- Sites where minor excavation and earth removal will expose shallow, sub-surface ground water flows capable of supporting wetland vegetation/habitat.

### **Task 3. With Data in Hand, Seek Regional “Buy-In” to Progress the Bank**

It is important that ALL of the regional functional groups agree to progress the bank, and that each is aware that they have a stake in its success.

- Regional Director must sign the final banking instrument and permits.
- Planning and Program Management must appropriate funds for the bank.
- Design Group must commit design staff, including landscape/environmental staff resources.
- Construction Division must commit an EIC and inspection staff.
- Maintenance Division must commit resources to perform remedial actions in the future.

### **Task 4. Establish a Mitigation Bank Review Team (MBRT)**

A MBRT should be formed after the regional functional units “buy-in” to the establishment of a wetland mitigation bank. The team should be comprised of federal, state and local regulatory agencies along with staff from DOT and FHWA. The team members with direct regulatory control over the banking project (such as COE, DEC, FWS, EPA) will have final decision making power. The MBRT will be involved in negotiating project details and will ultimately enter into a Memorandum of Agreement to officially recognize the bank. Any concerns raised by team members must be fully addressed and satisfactorily resolved during negotiations.

### **Task 5. Develop a Draft Banking Prospectus (Proposal)**

Before the first meeting of the MBRT, the DOT must develop a Banking Prospectus for the MBRT members to review and consider. The Prospectus should address the following items (at a minimum):

- Benefits the bank will provide to all agencies, not just the DOT.
- Statutory authority allowing the bank to be established.
- Baseline conditions of the proposed bank site(s) - such as geographic location, present land use, past land uses, ownership, soil conditions, existing and proposed hydrology, relationship to other wetlands/habitats, climatic conditions.
- Type(s) of wetland and intended functions to be established.
- Proposed credit values (i.e. - one mitigation acre credit is earned for each acre of wetland restored).
- Proposed geographic service area of the bank (usually based on watersheds).
- Types of projects eligible to use the bank.
- Use of credits and the debit process.
- Design of the bank.
- Construction of the bank (including construction sequencing or phasing plan).
- Post-construction monitoring of the wetlands (i.e. - monitoring protocol, performance criteria, content of monitoring reports).
- Remedial actions in the bank.
- Long term management of the bank.
- Administration (i.e. - tracking and reporting of credit usage).
- Required environmental permits.
- Financing (funding may be required for up to ten years, depending on monitoring requirements).
- Exhibits/maps.

#### **Task 6. Negotiate the Details of the Banking Prospectus**

The MBRT should convene to discuss the Draft Banking Prospectus. This task may involve several meetings and re-writes of the Prospectus, depending on the level of detail contained in the original Prospectus. This task involves the following key components:

- Discuss the concerns/comments/ideas of each agency represented on the MBRT.
- Rewrite the Prospectus to address agency concerns.
- Gain agreement from the MBRT that the Banking Prospectus satisfactorily addresses and resolves their concerns.

#### **Task 7. Prospectus - Public Notification Process**

When the MBRT agrees that the Banking Prospectus contains sufficient information and detail, the COE and DEC must publish an Official Public Notice and offer a 21 day comment period.

#### **Task 8. Address Comments Received**

The MBRT should convene to review and discuss the comments received during the 21 day comment period. The DOT will be responsible for formally addressing the comments received.

#### **Task 9. Prepare a Final Banking Prospectus**

After all comments are addressed to the satisfaction of the MBRT members, the DOT must prepare a Final Banking Prospectus which will be used as a template for the formal Memorandum of Agreement.

#### **Task 10. Secure Environmental Permits**

Based on the details that were negotiated during the development of the Banking Prospectus, the DOT must secure the environmental permits that will be required for the wetland mitigation bank. These permits typically must be secured before the MBRT agencies will sign the final Memorandum of Agreement. The submittal of environmental permit applications and preparation of the MOA can generally occur simultaneously.

#### **Task 11. Prepare a Draft Memorandum of Agreement (MOA)**

Using the Final Banking Prospectus as a template, a detailed Memorandum of Agreement should be prepared for the MBRT to review and consider. The MOA should address the items listed below (at a minimum). *IMPORTANT NOTE: The DOT Office of Legal Affairs should review and approve all versions of the MOA.*

- Purpose, goals, and objectives of the wetland bank.
- Benefits the bank will provide to all agencies, not just the DOT.
- Statutory authority allowing the bank to be established.
- Roles and responsibilities of the MBRT.
- Baseline conditions of the bank site(s) - including geographic location, present land use, past land

uses, ownership, soil conditions, existing and proposed hydrology, relationship to other wetlands/habitats, climatic conditions.

- Type(s) of wetland and intended functions to be established.
- Types of projects eligible to use the bank.
- Geographic service area of the bank (usually based on watersheds).
- Credit values (i.e. - one mitigation acre credit is earned for each acre of wetland restored).
- Credit deduction ratios (i.e. - two acre credits deducted for each acre of wetland impacted).
- Availability and use of credits and the accounting/debit process.
- Design of the bank.
- Construction of the bank (including construction sequencing or phasing plan).
- Post-construction monitoring of the wetlands (i.e. - monitoring protocol, performance criteria, content of monitoring reports).
- Remedial actions in the bank (how these actions will be performed and funded).
- Long term management of the bank.
- Administration (i.e. - tracking and reporting of credit usage).
- Required environmental permits.
- Financing (funding may be required for up to ten years, depending on monitoring requirements).
- Exhibits/maps.

#### **Task 12. Negotiate the Details of the MOA**

The MBRT should convene to discuss the Draft MOA. This task may involve several meetings and re-writes of the MOA, depending on the level of detail contained in the original MOA. This task involves the following key components:

- Discuss the concerns/comments/ideas of each agency represented on the MBRT.
- Rewrite the MOA to address agency concerns.
- Gain agreement from the MBRT that the MOA satisfactorily addresses and resolves their concerns.

#### **Task 13. MOA - Public Notification Process (optional)**

When the MBRT agrees that the MOA contains sufficient information and detail, the COE and DEC may elect to publish an Official Public Notice and offer a 21 day comment period. This task is not mandatory.

#### **Task 14. Address Comments Received**

If the MOA was offered for public review, the MBRT should convene to review and discuss the comments received during the comment period. The DOT will be responsible for formally addressing the comments received.

#### **Task 15. Prepare a Final MOA**

After all comments are addressed to the satisfaction of the MBRT, the DOT must prepare a Final MOA which will be signed by all agencies represented on the MBRT. The environmental permits secured for the project generally become part of the MOA. *IMPORTANT NOTE: The DOT Office of Legal Affairs*

*should review and approve all versions of the MOA.*

#### **Task 16. Prepare Construction Drawings**

Construction drawings must be developed in accordance with the provisions of the MOA and the environmental permits. The drawings must provide the construction contractor with enough detail to successfully convert the site from non-wetland to wetland.

#### **Task 17. Construct the Wetland Bank**

Earth moving, planting and other site construction activities must be carefully monitored for compliance with the construction drawings, the MOA and environmental permits.

#### **Task 18. Monitor the Ecological Progress of the Wetland Bank**

Post-construction monitoring is required to determine whether or not the pre-established performance standards are being met and to identify any physical or ecological problems that occur as the wetland matures. Depending on the type of wetland established, monitoring may be required for five to ten consecutive years.

#### **Task 19. Perform Remedial Actions**

If it is determined during monitoring that the pre-established performance standards are not being met, or that physical or ecological problems are occurring, remedial actions must be performed. Examples of actions that may be necessary include: removal of invasive plant species; replacement of dead vegetation; adjustment of water levels and control structures; and repair of dikes.

Any conditions deemed violations of the MOA must be addressed according to the pre-approved remedial action plan specified in the Agreement.

#### **Task 20. Administration of Banked Wetland Credits**

The tracking and reporting of wetland credit availability and usage will be the responsibility of the DOT, and all administrative activities will be periodically monitored by the regulatory agencies.

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March 6, 2002